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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

“D.H.”,

Plaintiff.

V.

META PLATFORMS, INC., formerly known as FACEBOOK, INC.; FACEBOOK HOLDINGS, LLC; FACEBOOK OPERATIONS, LLC; FACEBOOK PAYMENTS INC.; FACEBOOK TECHNOLOGIES, LLC; AND INSTAGRAM, LLC; and SNAP, INC..

Defendants.

Case No: 3:22-cv-04888

PLAINTIFF D.H.'S MOTION TO PROCEED UNDER PSEUDONYM

NOTE FOR MOTION CALENDAR

DATE:

1 **STATEMENT OF RELIEF REQUESTED**

2 Plaintiff "D.H." through her attorneys of record Margaret E. Mabie of Marsh Law Firm
3 PLLC, S. Mary Liu of Aylstock, Witkin, Kreis & Overholtz, PLLC, and Hillary Nappi of HRS&C
4 moves this Court for an order allowing them to proceed in the above-captioned matter using a
5 pseudonym.

6 Plaintiff makes this request in order to protect herself from harassment, injury, ridicule and personal
7 embarrassment.

8 **FACTS RELEVANT TO MOTION**

9 The matter before the court comes on Plaintiff's products liability suit for emotional distress
10 damages. Plaintiff, D.H., seeks to hold Defendants responsible for their defectively designed
11 products that are marketed to children under 18 without adequate warning of the life threatening
12 risks these products pose to young minds. As set forth in the complaint herein D.H. is the subject of
13 child pornography videos and images that are shared online. These images, which form the basis of
14 the claims herein, are highly personal, intimate, and humiliating to the plaintiff.
15
16

17 Plaintiff D.H., forced to commit a myriad of sexual acts by her online abusers. In each case,
18 the sexual abuse of the Plaintiff was photographed and/or videoed and these images were distributed
19 and traded on the Internet among pedophiles and child pornography enthusiasts. Plaintiff was
20 sexually abused online from the age of 13 to 18 in a number of images and videos that depict her
21 engaging in graphic sexual acts. She has been stalked on the internet and through direct messages
22 by apparent pedophiles and child pornography enthusiasts. On the internet today are blogs in which
23 child pornography consumers share D.H.'s images and videos. The postings are crass and disgusting.
24 D.H. has suffered greatly due to being the subject of these images and videos; they suffer
25 psychologically in a number of different manners; is hyper-vigilant, suffers a rational paranoia, has
26 fear and anxiety, and has had varying bouts of severe depression and anger to name a few.
27
28

ISSUES PRESENTED

Whether the Plaintiff's need for anonymity outweighs any prejudice to Defendants.
If so, whether it is appropriate to allow Plaintiffs to proceed via pseudonyms.

EVIDENCE RELIED UPON

- ## 1. The Declaration of James R. Marsh.

ARGUMENT

The Federal Rules of Civil Procedure do not explicitly authorize, nor absolutely prohibit, the use of fictitious names by plaintiffs or other parties. In *Does I Thru XXIII v. Advanced Textile Corp.* 214 FR.3d 1058 (9th Cir. 2000) (internal citations removed), the Ninth Circuit declared, “[i]n this circuit, we allow parties to use pseudonyms in the unusual case when nondisclosure of the party’s identity is necessary... to protect a person from harassment, injury, ridicule or personal embarrassment.”

In *Advanced Textile*, the Ninth Circuit held that “a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party’s need for anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity.” *Id.* at 1067. When “pseudonyms are used to shield the anonymous party from retaliation, the district court should determine the need for anonymity by evaluating the following factors: (1) the severity of threatened harm, (2) the reasonableness of the anonymous party’s fears; and (3) the anonymous party’s vulnerability to such retaliation. *Id.* at 1068 (internal citations removed). “The court must also determine the precise prejudice at each stage of the proceedings to the opposing party, and whether proceedings may be structured so as to mitigate that prejudice. Finally, the court must decide whether the public’s interest in the case would be best served by requiring the litigants reveal their identities.” *Id.* (internal citations removed).

1 **A. Severity of Threatened Harm**

2 *Advanced Textile* cites *Southern Methodist University Ass'n of Women Law Students v.*
 3 *Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) for the principle that the severity of threatened
 4 harm should be evaluated based on whether or not “divulg[ing] personal information of the utmost
 5 intimacy” and “reveal[ing] facts of a highly personal nature … cause damage to… [a person’s] good
 6 name [] and reputation.” This is consistent with the Ninth Circuit’s maxim that pseudonyms are
 7 allowed “when nondisclosure of the party’s identity is necessary… to protect a person from
 8 harassment, injury, ridicule or personal embarrassment.”

9
 10 Concerning child pornography victims, the Ninth Circuit noted that there are:

11 several ways in which the individuals depicted in images of child pornography are
 12 harmed by the circulation and viewing of those images. *See New York v. Ferber*, 458
 13 U.S. 747, 759 (1982) (explaining that the suffering of victims of childhood sexual
 14 abuse is “exacerbated by [the] circulation” and viewing of images documenting that
 15 abuse). These injuries include “the emotional and psychic” pain of knowing that the
 16 images are being viewed, *Id.* at 759 n. 10, as well as the repeated violations of the
 17 individual’s privacy interests, *Id.* at 758 n. 9. *See also Ashcroft v. Free Speech Coal.*,
 18 535 U.S. 234 (2002) (“Like a defamatory statement, each new publication [of the
 19 images]…cause[s] new injury to the child’s reputation and well-being.”). In the
 20 sentencing context, we have likewise held that the minors depicted in child
 21 pornography should be considered the “victims” of a defendant who possesses or
 22 trades in images of their abuse. *See United States v. Blinkinsop*, 606 F.3d 1110, 1117–
 23 18 (9th Cir. 2010); *United States v. Boos*, 127 F.3d 1207, 1210–11 (9th Cir. 1997).

24
 25 *United States v. Kennedy*, 643 F.3d 1251, 1260 (9th Cir. 2011).

26 D.H. is a victim who was harmed by this defendant’s possession of their child sex abuse
 27 images. Visual depictions of a prepubescent child’s rape and sexual exploitation are “personal
 28 information of the utmost intimacy.” Such images “reveal facts of a highly personal nature” which
 29 can result in “harassment, injury, ridicule or personal embarrassment.”

30
 31 Congress and the American people have recognized the fundamental affront to human
 32 dignity and personal privacy that child pornography represents and have chosen through public
 33 policy to make possession, distribution, receipt, transportation and production of child sex abuse
 34 images punishable by significant criminal penalties. The mere receipt of such images subjects an

1 individual to a mandatory minimum federal prison sentence of five years. 18 U.S.C. § 2252A(a)(2).
 2 Such public policy determinations, while not dispositive, support the notion that the current
 3 litigation involves matters that are highly personal in nature and of the utmost intimacy so that
 4 Plaintiff deserves the protection provided by proceeding under a pseudonym.
 5

6 As discussed by the Ninth Circuit in *Kennedy, supra*, and recognized by the United States
 7 Supreme Court in *New York v. Ferber*, 458 U.S. 747, 759 FN 10 (1982), “[t]he victim’s knowledge
 8 of publication of the visual material increases the emotional and psychic harm suffered by the
 9 child.... Thus, distribution of the material violates the individual interest in avoiding disclosure of
 10 personal matters. ...[and] the child’s privacy interests are also invaded.” *Id.* at FN 9.

11 In a previous criminal case involving Amy and Vicky, the Ninth Circuit ruled:

12 Amy and Vicky presented ample evidence that the viewing of their images caused
 13 them emotional and psychic pain, violated their privacy interests, and injured their
 14 reputation and well-being. See *Ferber*, 458 U.S. at 759 & n. 10, 102 S.Ct. 3348; *Free
 15 Speech Coal.*, 535 U.S. at 249, 122 S.Ct. 1389. Amy, for example, stated that her
 16 “privacy ha[d] been invaded” and that she felt like she was “being exploited and used
 17 every day and every night”. Vicky described having night terrors and panic attacks
 18 due to the knowledge that her images were being viewed online. Even without
 19 evidence that Amy and Vicky knew about Kennedy’s conduct, the district court could
 20 reasonably conclude that Amy and Vicky were “harmed as a result of” Kennedy’s
 21 participation in the audience of individuals who viewed the images. *Kennedy*, 643
 22 F.3d at 1263.

23 D.H. is in the same position, and the circulation of their images causes them the same
 24 injuries. All these harms, which are severe and can be lifelong, would be compounded should
 25 D.H.’s identity be revealed to the world. a
 26

B. Vulnerability to Retaliation

27 For all of the above reasons and as previously discussed, D.H. is particularly vulnerable to
 28 retaliation. There are many individuals who have expressed animosity towards D.H. and threatened
 her online.

1 **C. Absence of Prejudice to the Defendant**

2 This suit is against a private party and is based on the Defendant's defective products. The
 3 Defendant's status is an important factor in determining whether to permit D.H. to proceed
 4 anonymously. Unlike the typical defendant in a civil suit, the defendant in this case is not
 5 "innocent."

6 Plaintiff is aware than she cannot remain a stranger to the Defendants and is willing to share
 7 her identity with their attorneys. Plaintiffs' counsel will work with Defendants' counsel to arrange
 8 for this exchange of information at the appropriate time. While her actual identity is unknown, her
 9 child sex abuse images are intimately familiar to the Defendants.

10 Nonetheless, knowing Plaintiff's identity does nothing to advance the Defendant's case. The
 11 salient facts at issue concern their injuries, which are well documented. Although Defendants may
 12 believe that they have legal defenses, assertion of such defenses is in no way impeded by not
 13 knowing her legal name.

14 Although Plaintiff's images and videos are known within the child pornography consumer
 15 community, she is not a public figure. Her sexual exploitation, and her continued victimization
 16 through distribution of child pornography images thrust her into the child pornography community
 17 totally against her wishes. There is little to be practically gained simply from knowing her legal
 18 name. Knowing Plaintiff's name will have little effect on the Defendant's ability to present a
 19 defense, which is limited solely to damages.

20 **D. Public Interest**

21 The public interest in this litigation, if any, will not be furthered or enhanced by knowing
 22 D.H.'s legal identity. The Defendant's crime resulted in little or no publicity.

23 There is nothing about Plaintiff's identity, which is significant or newsworthy. On the
 24 contrary, her stories and any media coverage of her efforts to obtain restitution would be based
 25 solely on the public knowing her as "D.H.". In terms of the media's ability to cover this litigation,

allowing Plaintiff to proceed under pseudonym is preferable to closing the courtroom or sealing the record since the facts and the record can be publicly revealed without further harming her.

Other than closing the courtroom or sealing the record, there is no easily implemented alternative mechanism for protecting Plaintiffs' confidentiality. Proceeding under a pseudonym actually enhances the public's ability to participate in the litigation by obviating the need to seal or otherwise restrict documents and court proceedings. Since there is no familial or other direct relationship between the parties, there is no need to cloak any of the proceedings in secrecy once D.H.'s identity is protected. There is nothing in the materials submitted in the civil case, which will likely lead the public to discover Plaintiff's identity. Allowing her to proceed under pseudonym properly balances her need for anonymity against countervailing interests in full public disclosure. It also provides other victims with some comfort that they can seek appropriate legal redress without fear of disclosure of their identities.

1. CONCLUSION

There is a fundamental privacy interest, which is violated by the production, distribution and possession of child pornography. Exposure of a victim's legal identity only compounds that violation. For all the above reasons, D.H. respectfully requests that this Court allow her to proceed in the above-captioned matter using a pseudonym.

DATED August 26, 2022.

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